IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1307 of 2000
Date of Decision: 14.2.2007

Goli ...Petitioner

Versus

Gram Panchayat ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri R.S. Sihota, Advocate, for the petitioner.

Shri R.K.Jain, Advocate, for the respondent.

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned first Appellate Court on 25.2.2000, whereby an application filed by the respondent-defendant for setting aside an exparte judgment and decree dated 14.2.1992 was accepted and the said judgment and decree was set aside and the suit was restored to its original number.

The plaintiff-petitioner filed a suit for declaration in the year 1991 to the effect that he has become owner of the suit land measuring 8 kanals for the reason that he is an occupancy tenant and such occupancy rights have ripened into ownership by operation of law. In the said suit, initially, the defendant is purported to have refused to receive the summons on 5.3.1991, but subsequently on the basis of Munadi purportedly effected on 27.3.1991, exparte proceedings were initiated against the defendant, which led to the exparte judgment and decree dated 14.2.1992.

An application for setting aside of the said exparte

judgment and decree was filed on 17.4.1993 on the ground that the defendant was never served with the process of the suit and the factum of exparte judgment and decree came to the knowledge of the Panchayat in February, 1993, when the plaintiff was making the schemes for the disposal of the suit land of the village.

Though the learned trial Court dismissed the application after voluminous evidence on the question `whether the defendant was properly served or not' , were led, but the learned first Appellate Court set aside such order passed by the learned trial Court and allowed the application filed by the defendant. It is the case of the petitioner that Sarpanch of the Gram Panchayat has refused to accept the summons for 5.3.1991. On the aforesaid date, the learned trial Court fixed the case for 27.3.1991 and ordered the defendant to be served by Munadi. The Munadi is purportedly carried out by one Ami Chand, Chowkidar of the village witnessed by one Kishan Singh. Kishan Singh has not been examined as a witness by any of the parties but Ami Chand has been examined by the defendant as AW2. He has denied that he effected any Munadi in the village on 23.3.1991. He also denied his thumb impressions on the report Exhibit A.1. In view of the said statement, the learned first Appellate Court has found that the defendant is not proved to be properly served and consequently set aside the exparte judgment and decree.

Learned counsel for the appellant has vehemently argued that the evidence of Ami Chand that he has not thumb marked the report Exhibit A.1 is belied by the testimony of the RW5-Som Nath Aggarwal, an expert produced by the petitioner, who deposed that the report Exhibit A.1 is not correct and that the thumb impressions of Ami Chand on report

Exhibit A.1 tally with his specimen thumb impressions. It has been argued that the defendant has not produced any expert witness to controvert the testimony of the expert produced by the petitioner and therefore, the learned first Appellate Court has committed grave illegality in setting aside the exparte proceedings.

However, I do not find any substance in the argument raised by the learned counsel for the petitioner. The primary evidence is of a witness, namely, Ami Chand as AW2. He has deposed that he has not carried out any Munadi. Even assuming that the report Exhibit A.1 bears the thumb impressions of Chowkidar, that will not mean that Munadi was in fact, carried out. The petitioner has the opportunity to cross-examine the witness but his testimony could not be shattered in the cross-examination.

In view thereof, I do not find any illegality or irregularity in the impugned order passed by the learned first Appellate Court, whereby exparte judgment and decree passed by the learned trial Court, has been set aside and the suit if restored to its original number. It may be noticed that the setting aside of the exparte judgment and decree will only permit the parties to contest the suit on merits and will enable the Court to decide the lis between the parties after giving opportunities to both the parties. Such a course will in fact advance the cause of justice.

Consequently, the present revision petition is dismissed.

14-02-2007 (HEMANT GUPTA)
ds JUDGE